



HARMONIZED SYSTEM
REVIEW SUB-COMMITTEE

-
26th Session
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NR0289E1
(+ Annexes I to X)

O. Eng.

Brussels, 19 June 2002.

STUDY OF POSSIBLE AMENDMENTS TO THE NOMENCLATURE
WITH REGARD TO THE CLASSIFICATION OF MULTIFUNCTIONAL DIGITAL COPIERS
(Item III.A.19 on Agenda)

Reference documents :

42.406 (RSC/18)	NC0250E2, Annex H/13 (HSC/25 – Report)
42.498 (RSC/18)	NC0300E1 (HSC/26)
42.500, Annex B/19 (RSC/18 – Report)	NC0335E1 (HSC/26)
42.750, Annex E (HSC/22 – Report)	NC0430E2, Annex H/4 (HSC/27 – Report)
NR0023E1 (RSC/19)	NR0182E1 (RSC/24)
NR0037E1 (RSC/19)	NR0205E2, Annex C/14 (RSC/24 – Report)
NR0045E2, Annex A/23 (RSC/19 – Report)	NR0221E1 (RSC/25)
NC0059E1 (HSC/23)	NR0234E1 (RSC/25)
NC0090E2, Annex IJ/26 (HSC/23 – Report)	NR0249E1 (RSC/25)
NC0160E2, Annex H/14 (HSC/24 – Report)	NR0250E1 (RSC/25)
NC0211E1 (HSC/25)	NR0265E3, Annex C/11 (RSC/25 – Report)
NC0243E1 (HSC/25)	

I. BACKGROUND

1. At its 25th Session, the Review Sub-Committee continued its discussions on the study of possible amendments to the Nomenclature with regard to the classification of multifunctional digital copiers. The following main points were made :

- The **Brazilian** Delegate indicated that his administration could accept the **Canadian** text for heading 90.09 set out in paragraph 8 of Doc. NR0249E1, but amended to read “Copying apparatus, not elsewhere specified or included” (see Annex VIII to this document).
- The **Canadian** Delegate informed the Sub-Committee that he could support the **Brazilian** amendment to the text of heading 90.09 (see Annex IX). In reference to the **US** proposal concerning the subheading structure, he indicated that his administration could support it (see Annex VIII).

Note : Shaded parts will be removed when documents are placed on the WCO documentation database available to the public.

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- The **US** Delegate indicated that his administration was in favour of maintaining current heading 90.09 with regard to analogue copiers and, in addition, expressed concern about the ramifications of amending Note 3 to Section XVI. He also stated that his administration was currently drafting a proposal to address many of the issues that delegates had brought forward and expected to submit it to the Secretariat in time for consideration at the Sub-Committee's next session. This proposal had, as its basis, the minimalization of classification disputes by grouping in one heading multifunctional digital machines, printers of headings 84.43 and 84.71, digital copiers, fax machines (where the copying function was a subsidiary function) and other office printers of heading 84.72.
- The Delegate of **Japan** agreed with the Secretariat's proposal to delete heading 90.09 from future consideration for multifunctional digital copiers since the apparatus covered by present heading 90.09 would no longer be manufactured by 2007. He was also in agreement with the Secretariat to discard heading 85.17 from consideration for these goods since the fax function could be considered as a secondary function, being added to the printer and scanner combination.
- The **EC** Delegate informed the Sub-Committee that, while the **EC** was in favour of regrouping all of these multifunctional appliances in one heading and to classify them by application of GIR 1, it did not have an agreed or common position at this time. He drew the Sub-Committee's attention to the fact that the **EC** would address this issue in its upcoming omnibus package of proposed changes to the information technology provisions of the Nomenclature, which it would be submitting to the Secretariat.

2. The Sub-Committee concluded its discussions by agreeing to continue to examine this issue at its next session on the basis of the Secretariat proposal, which had received substantial support within the Sub-Committee and the possible proposals from the **US** and the **EC**.

II. SECRETARIAT COMMENTS

3. As there have been many documents and proposals by administrations on this agenda item, the Secretariat has grouped all relevant proposals/comments in a single document for the convenience of the delegates. They are reproduced as annexes to this document as follows : Annexes I to VII are excerpts from Doc. NR0221E1, Annex VIII is an excerpt of Doc. NR0250E1, Annex IX is an excerpt of Doc. NR0249E1 and Annex X is an excerpt of Doc. NR0234E1.

III. CONCLUSION

4. The Sub-Committee is invited to take account of the comments made by delegates at previous sessions of the Sub-Committee and summarised above, as well as the proposals by administrations set out in the annexes to this document, when it examines this agenda item.

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Excerpts from Doc. NR0221E1

SECRETARIAT PROPOSAL

1. In drafting its proposal for the future classification of multifunctional digital copiers, the Secretariat first noted that the Sub-Committee had, in the past, considered four possible headings for the classification of multifunctional digital copiers (headings 84.71, 84.72, 85.17 and 90.09).
2. According to information received by the Secretariat from various sources knowledgeable about the classification of copying apparatus, it would appear that the apparatus covered by present heading 90.09, also known as analogue copying apparatus, will, in all probability, no longer be manufactured by 2007. As a result, it would seem reasonable to delete heading 90.09 from future consideration and to transfer its potential content to Chapters 84 or 85.
3. Most multifunctional digital copiers incorporate a printer, a scanner and sometimes also a fax function. The fax function, apparently added to the printer and scanner combination by the simple insertion of an electronic card, could be regarded as a secondary function. Consequently, it would appear appropriate not to include multifunctional digital copiers in heading 85.17 with facsimile machines in the future.
4. If one considers printing as the principal function of digital copying apparatus, one possibility would be to include such copying apparatus in heading 84.71. However in view of the existing disagreement in the HS Committee as to whether copying equates to printing and in view of the multifunctional nature of the machines in question, the Secretariat is also inclined to discard heading 84.71 as a possible future home for digital copiers.
5. Thus, by a process of elimination, we are left with heading 84.72 - other office machines. The Secretariat believes that classification in heading 84.72 is quite a good fit for multifunctional digital copiers since they are, in fact, office machines.
6. The Secretariat, therefore, suggests inserting a reference to "copying machines, including combination machines capable of performing copying, printing, scanning or facsimile functions" in that heading. This wording would eliminate the necessity to invoke the application of Note 3 to Section XVI or of General Interpretative Rule 3. Due to the link with Chapters 85 and 90, appropriate amendments have been drafted to reflect the new situation.
7. As regards current heading 84.72, it should also be noted that, according to trade circles, hectograph or stencil duplicating machines are no longer being manufactured. Consequently, reference to those machines should be deleted from heading 84.72, and subheading 8472.10 (Duplicating machines) should be deleted. For the sake of clarity, it should be noted that the expression "duplicating machines" does not refer to small printing machines (heading 84.43).
8. One further option that the Secretariat would consider would be to also transfer facsimile machines and teleprinters of heading 85.17 to heading 84.72 in view of the related nature of these machines with office machines of heading 84.72. That option is set out separately in Annex VI to this document.

9. In the light of the foregoing, the Secretariat has presented two options in Annex VI for the consideration of the Sub-Committee as to the future classification of copying and facsimile apparatus in the Harmonized System. It has, however, refrained from preparing corresponding amendments to the Explanatory Notes, pending the outcome of the discussions.
10. Finally, a number of comments have been received from administrations with regard to this issue. These are set out in Annexes I to V of this document.

III. CONCLUSION

11. The Sub-Committee is invited to examine the Secretariat's proposals and the comments from administrations found in the Annexes to this document when considering this agenda item.

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8473.43 - - Sorters of copying apparatus

8473.44 - - Other”.

CHAPTER 85.

New Note 1 (c).

Insert the following new Note 1 (c) :

“(c) Combination machines capable of performing copying, printing, scanning or facsimile functions, of heading 84.72; or”

Delete “or” from present Note 1 (b) and reletter present Note 1 (c) as 1 (d).

CHAPTER 90.

Note 1 (g).

Delete “(heading 84.70);” and substitute :

“(heading 84.70); copying apparatus (heading 84.72);”.

Heading 90.09.

Delete heading 90.09 and subheadings 9009.1 to 9009.99.

Option 2

CHAPTER 84.

Note 5 (D).

Delete "Printers," and substitute "Printers, other than combination machines capable of performing copying, printing, scanning or facsimile functions, of heading 84.72,".

Heading 84.72.

Delete and substitute :

"84.72 Copying apparatus, including combination machines capable of performing copying, printing, scanning or facsimile functions, facsimile machines and teleprinters, all the foregoing whether or not connectable to an automatic data processing machine; other office machines (for example, addressing machines, automatic banknote dispensers, coin-sorting machines, coin-counting or wrapping machines, pencil-sharpening machines, perforating or stapling machines).

8472.20 - Addressing machines and address plate embossing machines

8472.30 - Machines for sorting or folding mail or for inserting mail in envelopes or bands, machines for opening, closing or sealing mail and machines for affixing or cancelling postage stamps

8472.40 - Copying apparatus, including combination machines capable of performing copying, printing, scanning or facsimile functions; facsimile machines and teleprinters

8472.90 - Other".

Heading 84.73. Subheading 8473.40.

Delete and substitute :

" - Parts and accessories of the machines of heading 84.72 :

8473.41 - - Automatic document feeders of copying apparatus

8473.42 - - Paper feeders of copying apparatus

8473.43 - - Sorters of copying apparatus

8473.44 - - Of facsimile machines or teleprinters

8473.45 - - Other".

CHAPTER 85.

New Note 1 (c).

Insert the following new Note 1 (c) :

“(c) Combination machines capable of performing copying, printing, scanning or facsimile functions, of heading 84.72; or”

Delete “or” from present Note 1 (b) and reletter present Note 1 (c) as 1 (d).

Heading 85.17.

1. Heading text.

Delete and substitute :

“85.17 Electrical apparatus for line telephony or line telegraphy, including line telephone sets with cordless handsets and telecommunications apparatus for carrier-current line systems or for digital line systems, other than facsimile machines and teleprinters; videophones.”

2. Subheadings 8517.2, 8517.21 and 8517.22.

Delete these subheadings.

CHAPTER 90.

Note 1 (g).

Delete “(heading 84.70);” and substitute :

“(heading 84.70); copying apparatus (heading 84.72);”.

Heading 90.09.

Delete heading 90.09 and subheadings 9009.1 to 9009.99.

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NOTE FROM THE SOUTH AFRICAN ADMINISTRATION

1. "This administration has also had its fair share of problems relating to the classification of the subject merchandise. We have taken cognisance of the various discussions and proposals that have been made over the years in relation to this particular classification issue, and would comment as follows.
2. During technical discussions with industry, it has become evident that the machines in question do not operate according to the processes currently covered by the scope of heading 90.09. The current method of operation for the majority of these machines utilises "scanning" and "printing" technology to copy, rather than the traditional projection of an optical image onto a photosensitive surface. This is in line with the conclusion reached by the Committee at the 27th Session of the HSC.
3. This administration however also encountered difficulties in ascertaining either the main function or principal use, when it came to specific machines that were put forward for classification purposes. By virtue of this fact and owing to the composite nature of the machines in question, classification using GIR 3 (c) appears to be the reasonable option. Because however of the restrictive nature of the current processes envisaged by heading 90.09, classification has been made very awkward, as GIR 3 (c) could not realistically be applied, as classification within heading 90.09 could not enter the picture.
4. The South African Revenue Service shares the view expressed by the EC Delegate at the 27th Session of the HSC, that due to the fact that the Explanatory Notes have not kept up to date with technological advances in this field, the Nomenclature still reflected the processes utilized at the time of drafting. As we feel that heading 90.09 must be able to be considered in this classification instance, it is suggested that the legal text be amended to also encompass digital type copying. Furthermore it is suggested that the provision then be made for the current genus of machines within 90.09, specifically as multifunction machines that scan, fax, print and copy. A specific Chapter Note to this effect should be inserted to ensure minimum confusion.
5. It should however be stressed (possibly in the form of an exclusion to heading 90.09), that should it be possible for a principal function to be determined, the goods should be classified in accordance therewith. This would particularly apply in respect of headings 84.71, 84.43 and 85.17."

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NOTE FROM THE JAPANESE ADMINISTRATION

The Japanese Administration would like to provide the following comments :

"With a view to clarifying the scope of heading 90.09, the term "directly" be inserted after the term "document" in the third line of the first paragraph of Part (A) of the Explanatory Note to heading 90.09. Therefore, this paragraph should read as "These apparatus incorporating ... which projects the optical image of an original document **directly** on to a light-sensitive surface, ... of the image."

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NOTE FROM THE MOROCCAN ADMINISTRATION

“You sought this administration’s comments and proposals concerning the possible amendment of the Harmonized System with regard to the classification of multifunctional digital copiers.

In reply, I have the honour to inform you that as this question has been submitted to the Harmonized System Committee (HSC), this administration proposes that the HSC’s decision be awaited.”

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NOTE FROM THE MEXICAN ADMINISTRATION

On 31 October 2001, the Mexican Administration sent a note to the Secretariat indicating that it did not have any submission to make on this issue.

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NOTE FROM THE SENEGAL ADMINISTRATION

“Please note that the Senegal Administration is in favour of regrouping in a sole and single heading all multifunctional digital copiers.

This option, which is in keeping with the requirements of international trade, would simplify the classification of these apparatus in the HS, as such classification would be determined essentially by their principal function.

A legal Note including the terms of Note 3 to Section XVI should also be added to Chapter 90, so as to better clarify its scope.”

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Excerpt from Doc. NR0250E1

PROPOSAL BY THE US ADMINISTRATION TO
SIMPLIFY THE STRUCTURED NOMENCLATURE TO HEADING 90.09

1. "The United States submits the following proposed modification to the structured nomenclature to heading 90.09.

Heading 90.09

Replace subheadings 9009.11 through 9009.30 with the following new subheadings :

“ 9009.10 - Electrostatic photo-copying apparatus
9009.40 - Other copying apparatus”

2. Because of changes in technology, electrostatic photocopiers now account for at least 97 % of US trade¹ in the copiers classified in heading 90.09. Of those copiers only about 1 % are of the direct-process, electrostatic type provided for in subheading 9009.11. Trade in the other subheadings for copiers is similarly insignificant. In our view, the current 5 subheadings for copiers should be reduced to two.”

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¹ U.S. imports and exports combined for 1999.

Excerpts from Doc. NR0249E1

Proposed Amendments By the Canadian Administration for HS 2007

1. The **Canadian** Administration proposes to expand the scope of heading 90.09 to provide for digital copying and other copying technologies as well as the current photo-copying and thermo-copying technologies. Although there may be a limited trade in basic digital copiers, it is important to provide a reference for this type of technology. The inclusion of such a reference in heading 90.09 would provide a potential classification option for multifunction digital copiers and similar units that is consistent with recent decisions of the Harmonized System Committee. Such a classification would apply in those instances where the copier constituted the essential character of the unit.
2. The relevant amendments would be incorporated into HS 2007. This approach would include the following amendment to heading 90.09, the following new subheading and additions to the Explanatory Note to heading 90.09. It should be noted that all page references refer to the 1996 Explanatory Notes.

2007 Nomenclature

3. Heading 90.09 would be amended to read :

“Copying apparatus, other than that of headings 84.71 and 84.72”
4. Immediately after “9009.30 - Thermo-copying apparatus” the following new subheading would be inserted :

“9009.40 - Other copying apparatus”
5. Note 5 (D) to Chapter 84 would be amended to include the following reference to digital-copying apparatus that are of a kind solely or principally used in automatic data processing systems (the amendments are in “square brackets” for ease of reference) :

“(D) Printers, [copying apparatus,] keyboards, X-Y co-ordinate input devices and storage units which satisfy the conditions of paragraphs (B) (b) and (B) (c) above, are in all cases to be classified as units of heading 84.71.”

2007 Explanatory Note to heading 90.09

6. Immediately after “9009.90 – Parts and accessories”, and before “(A) Photocopying apparatus incorporating an optical device”, on page 1592 the following would be inserted :

“This heading covers all copying apparatus except those specifically designed to form a unit of heading 84.71 or office machines of heading 84.72. The copying processes utilize a wide range of technologies including photo-copying, thermo-copying, digital-copying, etc.”
7. Immediately after the third paragraph on page 1593 insert the following text :

“(D) OTHER COPYING APPARATUS

These apparatus do not directly transfer the document/image to a light sensitive surface such as a photosensitive drum or a photosensitive paper. In the case of digital-copying apparatus, the document/image is scanned (i.e., digitally broken up into 1’s and 0’s) and the digital data is stored as a digital file in the machine’s memory. The data from the digital file is transferred to the print engine, such as an ink-jet or thermo printer, which in turn generates the required number of copies.”

Rationale for Proposed Amendments

8. The proposed amendments (paragraphs 8 and 9) to the heading and subheading structures respectively would expand the scope of heading 90.09 to include all copying technologies including basic digital copiers. The changes at the heading and subheading levels would be supported by the addition of a definition of digital-copying apparatus contained in paragraph 4 above.
9. In order to prevent potential classification problems with digital copiers or other copiers designed for use in an automatic data processing machine system of heading 84.71 and duplicating office machines of heading 84.72, the exclusion outlined in the amended heading text would direct that such machines would be classified in either heading 84.71 or 84.72. This exclusion reference would be mirrored by the new Explanatory Note to heading 90.09 (paragraph 11) and the amendment to Note 5 (D) to Chapter 84 (paragraph 10). This approach would be consistent with all relevant existing Harmonized System Committee decisions on such digital copiers.
10. With respect to multifunctional digital copiers, the classification would still be made on a model-by-model basis taking into account which function of the unit constituted its essential character. However, the inclusion of basic digital copiers within the scope heading 90.09 would provide a valid “copier” classification option that is not found in either HS 1996 or HS 2002.”

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Excerpts from Doc. NR0234E1

II. NOTE FROM THE BRAZILIAN ADMINISTRATION

1. “Brazil’s proposal consists of two parts : (1) amending Note 3 to Chapter 90 to specify that the provisions of Note 3 to Section XVI also apply to this Chapter; (2) stipulating that photocopying apparatus incorporating an optical system, connectable to an automatic data processing machine, can fall to be classified in heading 90.09.
2. In this way, these multifunctional apparatus could be classified merely by application of GIR 1, while retaining the possibility of classifying each apparatus according to its principal function and specific characteristics, thus avoiding the transfer of products with different designs and properties to a single Harmonized System heading.
3. The following is the proposal from the Brazilian Administration :

ARTICLE 16 PROCEDURE

AMENDMENTS TO THE NOMENCLATURE

Chapter 90.

1. **Note 3.**

Delete and substitute :

“The provisions of Notes 3 and 4 to Section XVI apply also to this Chapter.”

2. **Heading 90.09. Heading text.**

Delete and substitute :

“Photocopying apparatus incorporating an optical system, whether or not connectable to an automatic data processing machine; photocopying apparatus of the contact type, thermo-copying apparatus.”

III. SECRETARIAT COMMENTS

5. During HSC/27, there were discussions as to whether digital copying was covered by the text of heading 90.09. In addition, there were discussions as to whether the multifunction digital copiers at issue incorporated an optical system. If the goal of the Brazilian proposal is to ensure for 2007 that the multifunctional digital copiers currently under consideration by the Harmonized System Committee are classified in heading 90.09, then the Secretariat believes that the following text would be a useful starting point.

Heading 90.09 – new text :

90.09 “Copying machines, including combined machines capable of performing copying, printing, scanning and facsimile functions, whether or not connectable to an automatic data processing machine.”

6. The Secretariat believes that, considering the discussions at HSC/27 on this issue, it would be appropriate to replace “photocopying apparatus incorporating an optical system” by “copying machines, including combined machines capable of performing copying, printing, scanning and facsimile functions, whether or not connectable to an automatic data processing machine”. This change would eliminate having to decide whether digital copying is a “photocopying process” covered by the text of heading 90.09. The same would apply to the issue of whether the conversion of information into a digital data stream is equivalent to an “optical system” covered by heading 90.09. Both of these processes would, in the Secretariat’s opinion, be covered in the proposed Secretariat amendment to the **Brazilian** proposal.
7. In addition, as mentioned in Doc. NR0221E1, the Secretariat understands from trade circles that by 2007, photocopying machines of the optical type, as mentioned in the text of heading 90.09, will no longer be manufactured.
8. Given these considerations, the Secretariat believes that it would then not be necessary to retain, in the heading text of the **Brazilian** proposal, the phrase “photocopying apparatus of the contact type, thermo-copying apparatus”. As a result, the Secretariat has not included this phrase in its proposal. However, the Secretariat is of the view that its proposal is broad enough to cover such machines should they continue to be traded in 2007.
9. Regarding the **Brazilian** proposal to have Note 3 to Section XVI apply as well to Chapter 90, the Secretariat is of the view that only adding a reference to that Note to Chapter 90 will not solve the problem of applying that Note to multifunction machines potentially classifiable in Chapters 84, 85 and 90. Note 3 to Section XVI applies to Chapters 84 and 85 and is restrictive in that sense. By saying that the provisions of Note 3 also apply to Chapter 90, the Secretariat understands that to mean that the restrictive nature of the application of Note 3 to Section XVI also applies when applying this Note to Chapter 90. In other words, when applying the provisions of this Note to Chapter 90, it is applied only to composite machines consisting of two or more machines classifiable in Chapter 90 and not to machines classifiable in other Chapters, e.g., Chapter 84 or 85. What is necessary, in the Secretariat’s opinion, is a modification of Note 3 to Section XVI to say that it applies to Chapters 84, 85 and 90. In this regard, the Secretariat suggests the following :

New Note 3 to Section XVI :

“Unless the context otherwise requires, composite machines consisting of two or more machines classifiable in Chapters 84, 85 or 90, fitted together to form a whole and other machines designed for the purpose of performing two or more complementary or alternative functions referred to in Chapters 84, 85 or 90 are to be classified as if consisting only of that component or as being that machine which performs the principal function.”

10. The Secretariat would point out that Note 2 to Chapter 22 states that Note 2 also applies to Chapters 20 and 21. While the situation is not identical, as these Chapters are within the same Section, the concept of having a Note in one Chapter applicable to another Chapter has some relevance in regard to the Secretariat's proposal. However, the Secretariat leaves it to the Review Sub-Committee to decide whether it is appropriate to include a reference in a Section Note to a Chapter which is found in another Section.
 11. In any case, the Secretariat believes that by 2007 the products of present heading 90.09 will largely be obsolete and would prefer to provide for multifunctional digital copiers in heading 84.72 in the future, as detailed in Doc. NR0221E1.
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